LITA MADDOX (M.W.)

v.

CALITO C. GUINTO & ANOR.

HIGH COURT, BRUNEI
HOOPER J
[CIVIL SUIT NO. 245 OF 1985]
14 JUNE 1986

DAMAGES: *Negligence - Claim by estate of deceased - Deceased killed in motor accident - Damages recoverable in respect of lost years - Principles to be applied - Meaning of lost years.*

This was a claim for the benefit of the estate of the deceased who was killed in an accident. The issue was the damages recoverable in respect of lost years. The deceased was a skilled electrician at the time of his death and he had prospects of promotion. The deceased was 27 years old at the time of his death. His retiring age would have been 55 years. The deceased was working for a company where his brother-in-law was the managing director and he testified that the deceased would have stayed with the company. There were no risks in the job which the deceased held. There was a lack of evidence on the personal expenses of the deceased.

Held:

[1] It is a question of fact as to what the multiplier should be. In deciding that the multiplier of 16 years was appropriate the following factors were taken into consideration: the age of the deceased at the time of the accident, the probable retiring age; the nature of the job; the prospects of a steady income; the vicissitudes of life; and the advantage for the estate to receive a lump sum.

[2] The damages for the pre-trial period was $16,720.31 and for the post-trial period it was $127,522.50. The damages were assessed firstly by determining the multiplicand for the pre-trial and post-trial periods and secondly, by deducting the personal expenses from these figures. The multiplicand for both the periods were assessed after taking into consideration the deceased's salary and his prospects of promotion. The personal expenses was assessed after taking into consideration his marital status and costs of maintenance.

[Judgement for the plaintiff.]

Cases referred to:

Gammell v. Wilson [1981] 1 All ER 578
The Personal Representatives of the Estate of Wong Sai-Chuen, deceased v. Tam Mei-Chuen & Ors. [1983] HKLR 331
Tiong Ing Chiong v. Giovanni Vinette [1984] 2 MLJ 179
White v. London Transport Executive [1982] 2 WLR 791
Adsett v. West [1983] 2 All ER 985
Harris v. Empress Motors [1984] 1 WLR 212
Furness v. B. & s. Massey Ltd. [1982] AC 27
White v. London Transport Executive [1982] QB 489
Gammell v. wilson [1982] AC 27

Legislation referred to:

Application of Laws Act [Brunei], s. 2

For the plaintiffs - T.C. Chan; M/s. Choo Chan & Wong
For the defendants - David Clidero; M/s. David Clidero & Co.
Joseph Linus (Amicus Curiae)

JUDGMENT

Hooper J:

The plaintiff is the sister and administratrix of the estate of Jaime Tipton Galdones, deceased, and she brings this action for the benefit of the said estate. Letters of Administration were granted to the plaintiff in the Court of the Probate Officer of Bandar Seri Begawan on 12 June 1984. The suit was commenced on 25 July 1985.

The cause of action arose on 6 September 1982, when the deceased was a passenger on a motorcar driven by the 1st defendant who was acting as the servant or agent of the 2nd defendant.

Interlocutory judgment has been entered against the 2nd defendant, and the matter comes before me to assess the quantum of damages, which should be awarded to the estate under the Law Reform (Miscellaneous Provisions) Act, 1934. This is an act of general application and is, therefore, in force in the State of Brunei by virtue of s. 2 of the Application of Laws Act Cap. 2 of the Laws of Brunei.

The parties are agreed that the estate is entitled to $6,000 in respect of loss of expectation of life and $9,300 in respect of funeral expenses.

No claim is made in respect of pain and suffering and the sole issue before me is what is recoverable in respect of the lost years. The damages recoverable under this head were described by Lord Scarman in *Gammell v. Wilson* [1981] 1 All ER 578 at 593 in the following words -

> The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve.

In "*The Personal Representatives of the Estate of Wong Sai-Chuen. deceased v. Tam Mei-Chuen & Ors.*" [1983] HKLR 331, the Court of Appeal of Hong Kong (Roberts CJ, Yang and Barker JJA; on 12 May 1982), considered the correct approach of a Judge in the face of *Gammell v. Wilson* in assessing the free balance. They considered this to be that -

(a) he assesses the net income (that is, the income after tax) which the deceased would have been expected to receive during his lost years;

(b) he deducts from this figure only "the cost of maintaining himself" (otherwise described as 'personal expenses');

(c) these personal expenses will include the cost of housing, food, clothing, travelling, insurance, a holiday, entertainment, social activities and perhaps a car;

(d) the 'personal expenses' should reflect the deceased's own pattern of expenditure when alive and the general standards of reasonable expectation of persons of his background, status and income;

(e) the contributions which the deceased would have made to his family do not form part of the cost of maintaining himself. Nor do his savings, if any.

The same considerations apply in Brunei as was clearly recognised by the Court of Appeal of Brunei in Civil Appeal No.1 of 1983 *Liew Choon Kin v. Ang Bee Tee* with the one exception that there is no income tax to be taken into consideration.

The first step must be to assess the income which the deceased would have been expected to receive during the lost years. This implies, first of all, calculating his annual earnings (the multiplicand) and secondly, selecting a multiplier to reflect the number of years that he would

be expected to receive those earnings, making due allowance for the vicissitudes of life, the fact that wages and costs will rise and the fact that it is an advantage to the estate to receive a lump sum as opposed to having money coming in over a period of years.

It is convenient to consider the multiplicand in respect of two periods; pre-trial and post-trial.

Pre-Trial

So far as the deceased's pretrial earnings are concerned, there is no dispute that he was earning $750 per month salary and that he earned $65 per month in overtime. That brings the annual figure to $9,780.

In addition to that, he received benefits which are not disputed -

$270 per month in respect of housing. This works out at $3,240 per annum;

$200 per month in respect of a car This works out at $2,400 per annum.

Mr. Clidero argues that, although these benefits have a monetary value, they are not cash in the pocket. They must, nevertheless, in my view, be taken into consideration because a deduction also has to be made in respect of the living expenses of the deceased.

There was also evidence to the effect that the deceased received $2.50 per day in respect of food allowance while he was working at Seria. The evidence, however, was that this was of a temporary nature in that he would not have been working at Seria for much longer.

In view of the small amount involved and the short time that it would have been payable, I do not think that I should take the food allowance into the calculations.

There was also evidence to the effect that the deceased received free medical and dental treatment but no attempt has been made to put a value on these. I do not propose, therefore, to take them into calculations.

This brings the gross earnings of the deceased, at the time of his death, to roughly -

	$ 9,780 salary plus overtime
	$ 3,240 housing
	$ 2,400 car
Total gross earnings $15,420	$15,420

There was evidence from Mr. Maddox, the managing director of the 2nd defendant, who was in fact the brother-in-law of the deceased and is the husband of the plaintiff, to the effect that if the deceased had still been alive today, he would have now been a skilled electrician earning $1,120 per month plus increased overtime, though no figure was given as to what the increased overtime might be.

However, the increase in his earnings, reflected in percentage terms, works out at roughly 50%. If the same percentage is applied to his overtime, it would mean that it would be roughly $97.50 per month. That would mean that his monthly earnings would be roughly $1,120 + $97.50 = $1,217.50. This would bring the annual figure to $14,610. To this annual figure should be added the benefits. There was no evidence as to what he might receive in benefits today, so I will take the same figures of $3,240 for housing and $2,400 in respect of car, making a gross total of -

	$14,610 salary and overtime
	3,240 housing
	2,400 car
Total:	$20,250

If the deceased's gross annual earnings, at the time of his death, were $15,420 and his gross annual earnings today would be $20,250, it seems to be that I should take the median figure as representing the multiplicand during this period from his death up to the date of this trial.

Thus I will take $17,835 as the multiplicand for the pretrial earnings.

This will mean that his pretrial earnings from the time of his death up to the trial will be -

$17,835 x 3.75 = $66,881.25

Post-Trial

This is much simpler because Mr. Maddox testified that the deceased was capable of being an electrical supervisor by this time. He would expect the deceased to have been so today. This would mean that he would be earning not less than $3,000 per month.

I have not been asked by Mr. Chan for the plaintiff to take this into account in respect of the pre-trial earnings, but I am asked to do so in assessing what the deceased's future earnings would have been in the post-trial period.

Mr. Clidero argues that an assumption that the deceased would have today been earning $3,000 a month is highly conjectural. I don't think he can be right. Mr. Maddox's evidence was unchallenged on this point.

This would mean that the multiplicand in respect of the post-trial period should be -

	$36,000 salary
	$ 3,240 housing
	$ 2,400 car
Total:	$41,640 per annum

The Multiplier

The deceased was 27 years old at the time of his death but his 28th birthday would have been only 3 days later. I think for the purposes of calculation, I should thus consider him to be 28 years old. He was in good health. There was evidence that his retiring age would have been 55 years.

Mr. Chan has referred me to a passage in the judgment of Huggins JA in the Brunei Court of Appeal in *Tiong Ing Chiong v. Giovanni Vinette* [1984] 2 MLJ at 179 where he said:

> In *Lee Woon Sun v. Wong Kin Keong,* I suggested as a general rule a discount of not more than 10% be appropriate for the contingencies of life.

Vinette's case went to the Privy Council but the Judges there did not comment on this quotation by Huggins JA when the appeal came before them, but considered that the multiplier of 13 applied in that case was on the low side in respect to the man of 27 despite the fact that he was engaged in the hazardous occupation of deep sea diving.

Mr. Chan has referred me to a number of cases involving awards in respect of deceased persons who were young men in their twenties at the time of their death.

It is, of course, a question of fact as to what should be the appropriate multiplier.

Mr. Chan urges me to discount 11 years leaving 17 years purchase arguing that the deceased's work, as an electrician, was not dangerous work.

Mr. Clidero concedes that the multiplier should be between 14 and 18, but argues in effect that not only was the deceased's occupation a risky one, but also that his prospects were not all that bright because of the depression in the oil industry and its effect on the position of the workers in the company he worked for. He also stressed the government policy of replacing expatriate labour with bumiputra workers.

Nevertheless, I bear in mind that the deceased was working for a company in which his brother-in-law was the managing director, who has given evidence that there is no doubt that the deceased would have stayed with the company and that he expects himself to be here in Brunei in 20 years' time. He also testified that there were no risks involved in the work of electrician because all the company's staff were trained with regard to the safeguards. Throughout all his years in Brunei, there has never been an occasion when one of his electricians was killed on the job.

It seems to me that one experiences greater risks driving down the streets in Brunei than the deceased would ever face on this sort of job.

I consider, on the evidence, that the deceased's prospects were good and that the risks involved were minimal.

Taking all things into consideration and making allowance for the vicissitudes of life, the fact that wages and costs will rise and the fact that it is an advantage to the estate to receive a lump sum as opposed to having money coming in over a period, I consider that a multiplier of 16 years is appropriate.

The pre-trial earnings have already been calculated on the basis that they would have accrued over 3.75 years. That leaves a balance of 12.25 years for the purpose of calculating what the deceased's earnings would have been during the post-trial period.

I therefore hold that the earnings during the post-trial would have been -

$41,640 x 12.25 = $510,090

Personal Expenses of the Deceased

The next step in the calculations is to deduct from each of the figures reflecting what the deceased's earnings would have been during the pre-trial and post-trial periods, the cost of maintaining the deceased at the standard of life appropriate to his case, in other words, his personal expenses.

It is here that there is a greater divergence between Counsel. Mr. Chan contents himself with relying on the case of *Ang Bee Tee v. Liew Choon Kin,* in which I held in a case where the evidence was sparse, to say the least, that the deduction should be one third. He relies on the fact that that judgment was upheld in the Brunei Court of Appeal.

Mr. Clidero, on the other hand, queries this proportion and refers me to two decisions in the Queen's Bench Division of the High Court in England -

(1) *White v. London Transport Executive* [1982] 2 WLR 791

(2) *Adsett v. West* [1983] 2 ALL ER 985.

and to a decision of the Court of Appeal in England in *Harris v. Empress Motors* [1984] 1 WLR 212 in which White's case was commented upon. I will come back to these.

First of all what are the facts?

The plaintiff herself gave evidence, which has not been contradicted, that the deceased came from a middle class family. He spent money on the necessaries such as clothing when they became necessary. He didn't drink alcohol except occasionally when it was offered. He didn't smoke. He didn't entertain a lot. He went to the cinema. He had no sporting hobbies. He drove a car. He had no life insurance. He sometimes gave presents on birthdays and such like. He didn't take holidays abroad although he had been about to go back to the Philippines where he had a girlfriend and brothers and sisters. She said she had no knowledge of his spending habits, but that she knew he sent money back to the Philippines by friends but she couldn't say how much. Sometimes $200 or $250 and the most was $500. She said he had no property or money in the Philippines or in Brunei.

At one stage, she appeared to say that the deceased bought a car in Brunei but this was contradicted by the evidence of Mr. Maddox, her husband.

In para. 6 of the Agreed Evidence of Mr. Maddox, he said that his wife (the plaintiff) had forbidden him to make enquiries from her family in respect of the money remitted to the Philippines.

This must reflect badly on the plaintiff's case. The burden is on the plaintiff to establish the facts from which inferences are to be drawn. If she is withholding information on this point, one can only assume that it does not reflect favourably on the calculations.

There is thus very little evidence as to what the deceased's actual living expenses were.

In my view, this case can be distinguished from the case of *Ang Bee Tee* where the deceased was an elderly man.

This is a case concerning a young man of nearly 28 years. There also appears to have been a withholding of information relevant to the calculations.

In *Adsett v. West*, the deceased was a single man of 26 when he was killed in a motor accident as a result of the admitted negligence of the defendant. The deceased was the only son of the plaintiff, who was a successful businessman. The plaintiff brought an action under s. 1 of the Law Reform (Miscellaneous Provisions) Act, 1934, claiming, amongst other things, damages (i) for the loss of the deceased's anticipated earnings during the lost years. The plaintiff contended that in assessing the amount of damages to be awarded, the deceased was to be treated as a married man, since he had a close relationship with a girl whom he was likely to marry in the near future. It was held:

(1) It was well established that in a claim under the 1934 Act the deceased's estate was entitled to damages on account of his anticipated earnings in the lost years, but that loss not to be awarded in full since the cost of the deceased's own living expenses and pleasures were to be deducted from his earnings before arriving at a surplus as a basis of damages. Furthermore, where the Court was considering a claim for the lost years in respect of a single man (particularly if he was without dependants), the surplus would be very much smaller than that of a married man since, without a wife or children to provide for, most of a single man's income would be devoted to his own maintenance and enjoyment and all that would remain would be that which he either would have saved or would have spent on or given to others.

(2) The surplus was to be calculated on the assumption that the deceased would have remained single during the lost years, except in so far as there were compelling reasons to do otherwise. While each case depended on its own facts, it was to be borne in mind that a single man's surplus was generally treated as a low percentage of lost income. Any

increase to take account of the likelihood that the deceased would have married would be very modest, having regard to the fact that to predict the financial circumstances of the deceased in the event of his marriage would involve a high degree of speculation.

(3) ...

(4) ...

(5) On the assumption that the deceased was to be regarded as a single man throughout the lost years the appropriate surplus during that period was 15%. However, in all the circumstances it was proper to increase the surplus to 25% to take account of the likelihood that the deceased would have married. That would have resulted in a total award for loss of surplus in the lost years of £31,800...

White's case was considered in *Adsett's* case.

In the Court of Appeal case of *Harris v. Empress Motors*, O'Connor LJ had some remarks to make on the question of assessing the personal expenses in the case of young men.

He said at p. 226:

... In *Gammell's* case the deceased was a 15-year-old gipsy... The Young man was single, living at home, doing a bit of fruit picking and such-like jobs, and earning some £20 a week. Mr. Hytner QC who tried the case, came to the conclusion that after deducting living expenses the young man on an average might be expected to have over some £8 per week. This figure gave him a multiplicand; he applied a multiplier of 16 and the damages came out at £6,656...

In the other case, *Furness v. B. & S. Massey Ltd.* [1982] AC 27, the deceased was 22 years old, single and living at home: ... The case was tried by Tudor Evans J who on the evidence before him found that the deceased was earning about £4,000 a year and he concluded that his living expenses would amount to two-thirds of his net income while living at home, but that in a few years he would move out from his home then his living expenses would account for three-quarters of his net income. On a 16-year purchase he applied the one-third multiplicand for 5 years and the one-quarter multiplicand for 11 years and assessed the Law Reform damages at £17,273.

Later, in the same judgment, at p. 227, he said:

The Court of Appeal in *Gammell* and the House of Lords in both cases could find no error of principle in the trial Judge's approaches to the problem, though they regarded the awards as very high.

Later, at p. 229 "H" he commented on *White's* case in this way:

This leaves the "available surplus" solution propounded by Webster J in *White v. London Transport Executive* [1982] QB 489. In that case the deceased was a single man aged 25 living with his mother. He was killed in the course of his employment in December 1976, and the trial was in July 1981. It was agreed that for 4 ½ years to the date of trial net earnings lost were £21,800 and that the continuing loss was at the rate of £6,000 per annum. Webster J said at p. 499:

It seems to me that the thing, the loss of which has to be measured, is the amenity of earning more than is needed to live a reasonably satisfying and potentially enjoyable life, taking into account in each case the particular circumstances of life of the particular deceased person. Thus, for example, in this day and age the ordinary working man's life would not be regarded by him as reasonably satisfactory and potentially enjoyable if he could not afford a short holiday, a modest amount of entertainment and social activity and, depending on his particular circumstances, a car. And it seems to me, therefore, that the amenity which he is deemed to have lost is the difference between what would be the cost of maintaining himself and providing those facilities and his

prospective net earnings; and in the cost of maintaining himself I include the cost of his housing, heating, food, clothing, necessary travelling and insurances and things of that kind, if relevant.

Although it seems to me in some ways artificial to do so, for reasons I have already given it appears that he is to be treated for this purpose as an eternally single man, on the principle, I suppose, that the money he in fact spends on his family, if he has one, or if it is likely that he will have one, is money which would be available, after matters I have referred to, to be spent in other ways if he so desired; that is to say, if he were to prefer to spend it in other ways rather than to have a family. If he is to be treated in this way, it must follow that, although the House of Lords, as I have mentioned, said that the award of damages should be moderate, his notional surplus must be large enough to cover at least a not insubstantial part of the cost of maintaining a family, for although in the case of a man in the deceased's circumstances it can be regarded as probable in normal circumstances that his wife, if he were to marry, would do some paid work from time to time, it cannot be supposed that she alone would pay for the housing and maintenance of the children.

Later in his judgment Webster J said, at p. 500:

If I am to make an award which covers the whole period I must, therefore, do so in some other way, and in particular in some way which involves the drawing and application of reasonable inferences, including inferences as to what would be likely or most likely to have happened to the deceased if any of the relevant circumstances existing at his death were unlikely to remain constant. The first inference which needs to be drawn, as it seems to me, if my definition of the loss in question is correct, is whether, and, if so, broadly to what extent, the deceased's prospective earnings matched the circumstances into which he had been born and was living. Because if a man born and brought up in very comfortable circumstances is a relatively low earner his earnings might not even be sufficient to meet his reasonable needs, let alone to exceed them: while, on the other hand, a man with relatively modest demands, earning relatively a lot money compared with that earned by most men in his circumstances, would be likely to have a large surplus. Applying that test first therefore to the present case, I find on the available evidence that the deceased's earnings were reasonably appropriate for a man in his circumstances, giving him neither more nor less than an average surplus expressed as a percentage of his net earnings.

The Judge then inferred that the available surplus would be one-third of the net income for five years until he left home and one-quarter for the remaining ten years' purchase, much as Tudor Evans J had done in the *Furness* case. Save that I do not agree that the deceased is to be treated as an eternally single man and bearing in mind what I have said about joint expenditure and that the resulting awards were thought in *Gammell v. Wilson* [1982] AC 27 to be very high, this seems to me an acceptable way of arriving at the deduction to be made in cases of young persons. The reason for supporting this high rate of deduction in cases such as *White v. London Transport Executive* [1982] QB 489, *Gammell and Furness*, is that the future is speculative and allowance has to be made for the fact that a man may never marry, may never save a farthing, may never support anybody;

The other two Judges in the Court of Appeal, Goff LJ and Stephenson LJ both agreed with the judgment of O'Connor LJ.

Taking into consideration the *dictum* of O'Connor LJ in the Court of Appeal in England and the lack of evidence in the present case and the fact that vital information which could have been produced has not, I consider that the personal expenses of the deceased should be fixed at 75%.

That being so, the plaintiff is entitled to 25% of the earnings as calculated.

That gives figures as follows:

Pre-trial loss : $66,881.25 x 25%

= $16,720.31

Post-trial loss : $510,090 x 25%

= $127,533.50

There will, therefore, be judgment for the plaintiff in the total sum of -

$ 16,720.31	Pre-trial loss
$127,522.50	Post-trial loss
$ 6,000.00	Loss of expectation of life
$ 9,300.00	Funeral expenses
$159,543.00	(rounded up to nearest dollar)

and costs to be taxed by the Registrar unless otherwise agreed.

I will hear the parties on the question of interest.

Also found at [1988] 1 CLJ 863